IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4044 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL BHOLABHAI RANCHHODBHAI

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 4044 of 2001

MR AM PAREKH for Petitioner No. 1

MS DS PANDIT ASST GOVERNMENT PLEADER for Respondents No. 1-2,6

MR JV JAPEE for Respondent No. 3

NOTICE SERVED for Respondents No. 4-5

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/10/2001

ORAL JUDGEMENT

#. Heard Mr.A.M.Parekh, learned advocate appearing on behalf of the petitioners and Ms.D.S.Pandit, learned AGP

on behalf of the respondent Nos.1, 2 & 6 so also Mr.J.V.Japee, learned advocate for the respondent Nos.3 & 4. Though served, none appears for the respondent No.5 Gram Panchayat.

#. Rule. Ms.D.S.Pandit, learned AGP and Mr.J.V.Japee, learned advocate appearing for the respective respondents waive service of rule.

#. The brief facts giving rise to the present petition are as under :

The petitioner was allotted the land on 10-9-1991 for the construction of the house and total area is admeasuring 114.66 sq.yards. It is case of the petitioner that on 17-10-1994 the petitioner has applied for permission for construction of the house before the respondent No.5 and permission was granted. According to the petitioner that on 14-5-1996 the respondent No.2 without considering the earlier report dated 19-4-1995 and without considering the other aspects, allowed the appeal filed by the respondent Nos.3 & 4. However, according to the petitioners, the said appeal was filed beyond time and instead of filing the appeal before the District Appellate Committee, Sabarkantha and without jurisdiction, has cancelled the allotment made in favour of the petitioner of the land admeasuring 71.11 sq.yards. Thereafter, the petitioner has approached the respondent No.2 by way of Appeal on 1-3-1997. However, the appeal filed by the petitioner has been rejected by the respondent No.2. Thereafter, the petitioner has approached the respondent No.6 by way of revision being Revision Application No.52/1997 and that revision application is also rejected by the revisional authority on 26-2-2001. Therefore, present petition is directed against the order rejecting revision application preferred by the petitioner.

#. Learned advocate Mr.Parekh has submitted that the lower authorities have committed gross error in not considering the fact that the plot allotted to the petitioner admeasuring 114.66 sq.yards which is not at all encroaching the public road. According to Mr.Parekh, this fact was brought to the notice of all the lower authorities but none of the authority has considered this aspect and passed the order cancelling the allotment permission of the land granted by the respondent No.5 in respect of the land 77.11 sq.yards. During the course of hearing, this Court has directed learned AGP Ms.Pandit to call for the report from the Mamlatdar pointing out the actual situation on the plot in question allotted to the

petitioner and also further directed to inquire as to whether the existence of the plot in question is an encroachment on the public road or not ? Pursuant to the direction of this Court, the Mamlatdar, Prantij has submitted report before the Deputy Collector on 17-10-2001. The report submitted to the Deputy Collector as well as the photographs of the plot land in question has been placed on record. Considering the opinion expressed in the report submitted by the Mamlatdar, Prantij, prima facie, this Court is of opinion that as such there is no encroachment on the public road. However, it seems that this aspect has not been taken into consideration by the lower authorities at the time of rejecting the revision application. It has come on record that this fact was brought to the notice to the effect that now the road is already in existence and there was no encroachment upon the road. This fact is also mentioned by the Talati-cum-Mantri of the Gram Panchayat concerned but the revisional authority seems to have not considered all these aspects but merely relied upon the observations made by the Collector and ultimately rejected the revision application. Learned advocate Mr.Parekh has also submitted that Salal Gram Panchayat has recently issued certificate dated 20th October, 2001, wherein it is clearly pointed out that because of the allotment of the plot land admeasuring 114.66 sq.yards in question in favour of the petitioner and there was no encroachment upon the public road. Thus, considering the report submitted by the Mamlatdar to the Deputy Collector, Himatnagar so also considering the fact that these aspects were not taken into consideration by the revisional authority and therefore, the order dated 26th February, 2001 passed by the revisional authority in Revision Application No.52 / 1997 requires to be set aside.

#. In the result, the petition succeeds. The order passed by the revisional authority - respondent No.6 in Revision Application No.52 / 1997 dated 26th February, 2001 is hereby quashed and set aside with direction to the respondent No.6 to decide afresh the revision application after considering the report dated 17th October, 2001 submitted by the Mamlatdar, Prantij addressed to the Deputy Collector, Himatnagar after giving reasonable opportunity to all the respective parties and to pass appropriate orders in accordance with law within three months from the date of receiving certified copy of this order. Rule is made absolute to the aforesaid extent. No Cost. Direct Service is permitted.

Date : 22-10-2001 [H.K.Rathod, J.]

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